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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

16	RALPH MARTINEZ,	) CASE NO. 3:08-cv-00565-BEN-CAB
17)
17		) CLASS ACTION
18	Plaintiff,)
19	vs.	) FIRST AMENDED COMPLAINT FOR
		) DECLARATORY AND INJUNCTIVE
		) RELIEF FOR VIOLATION OF
20	ARNOLD SCHWARZENEGGER, Governor,	) RELIGIOUS LAND USE AND
21	MATTHEW CATE, Secretary of the	) INSTITUTIONALIZED PERSONS ACT
	Department of Corrections and	) OF 2000, 42 U.S.C. § 2000CC,
22	Rehabilitation, LARRY SMALL,	) ET SEQ., FIRST AMENDMENT OF
	Warden, Calipatria State Prison,	) THE U.S. CONSTITUTION, ART. 1
23	JOSE BUILTEMAN, Associate Warden,	) § 4 OF THE CALIFORNIA
	Calipatria State Prison, T. BOREM,	) CONSTITUTION, AND §§ 5009(a)
24	Correctional Sergeant, Calipatria	) AND 5030.1(a) OF THE
	State Prison,	) CALIFORNIA PENAL CODE
25)
26	Defendants.	) PLAINTIFF DEMANDS A TRIAL
	_____	) BY JURY

/ / /

INTRODUCTION

1
2 1. This is an action for declaratory and injunctive
3 relief from the substantial burdens that defendants have
4 imposed on plaintiff, and classes of others who are similarly
5 situated, who has been denied free exercise of his religious
6 beliefs through the defendants' customs, policies and practices
7 in the California Department of Correction and Rehabilitation
8 ("CDCR") prison system. Defendants have denied plaintiff access
9 to and use of fundamental elements of Native American spiritual
10 practices, notwithstanding CDCR policies that recognize the
11 necessity and importance of these elements, which include the
12 use of tobacco and other sacred plants in daily prayer and for
13 pipe ceremonies, the Sacred Sweat Lodge, outdoor ceremonies on
14 special days, provision of a Native American Spiritual Advisor,
15 and the ability to obtain Religious Items.

16
17
18 2. Plaintiff is incarcerated under the authority of the
19 State of California, at the Calipatria State Prison
20 ("Calipatria"). This action challenges defendants' customs,
21 practices and policies of denying plaintiff's rights to
22 practice his religious beliefs.

23
24 3. Plaintiff exhausted all administrative remedies for
25 the issues raised herein by filing Administrative Inmate
26 Appeals, which were denied at the Director's Level of review.
27 Plaintiff has no administrative remedy to redress the ongoing
28 violation of his free exercise rights under the First

1 Amendment, the Religious Land Use and Institutionalized Persons
2 Act of 2000 ("RLUIPA"), Article 1, Section 4 of the California
3 Constitution, or §§ 5009(a) and 5030.1(a) of the California
4 Penal Code.

5
6 **JURISDICTION AND VENUE**

7 4. This Court has subject matter jurisdiction in this
8 case under 28 U.S.C. §§ 1331 and 1343, 42 U.S.C. § 2000cc-2(a)
9 and directly under the Constitution. It has supplemental
10 jurisdiction under 28 U.S.C. § 1367.

11 5. This Court is authorized to order declaratory and
12 injunctive relief pursuant to Rule 57 of the Federal Rules of
13 Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

14 6. Venue properly lies before this Court under 28 U.S.C.
15 § 1391 in that the events giving rise to these claims occurred
16 or will occur within this judicial District.

17 7. Intradistrict Assignment. Assignment to the San Diego
18 Division of this District is proper because a substantial
19 portion of the events, conduct and omissions giving rise to
20 this action occurred in this District.

21
22 **PARTIES**

23 8. Plaintiff Ralph Martinez is Native American and an
24 enrolled member of the Soboba Band of Luseno Indians, a
25 federally recognized Indian Tribe. He is incarcerated at the
26 Calipatria State Prison. Mr. Martinez is a sincere believer in
27 and practitioner of Native American spiritual beliefs, which
28

1 are commonly referred to as the Native American Church or
2 Native American Religion. Mr. Martinez continues to be
3 subjected to the defendants' unlawful conditions, actions,
4 policies and procedures that deny him the right to practice his
5 religion.

6
7 9. Each of the defendants acted under color of state law
8 as to the matters set forth herein. All of the conditions,
9 policies and practices complained of herein are the result of
10 and pursuant to specific decisions, official policies or
11 customs of defendants. Each of the defendants knows of and is
12 responsible for the conditions, policies and practices set
13 forth herein.

14
15 10. Defendant Arnold Schwarzenegger is the Governor of
16 the State of California. He is the chief executive officer of
17 the State and has the ultimate authority over the operations
18 and policies of the California Department of Corrections and
19 Rehabilitation. He is sued individually and in his official
20 capacity.

21
22 11. Defendant Matthew Cate is the Secretary of the
23 California Department of Corrections and Rehabilitation
24 ("CDCR"), appointed by the Governor to that position on May 16,
25 2008. In his capacity as Secretary, defendant Cate exercises
26 administrative control of and has responsibility for the
27 operation of all correctional institutions, facilities, and
28 programs under CDCR's administration, including Calipatria.

1 Defendant Cate was and is at all relevant times personally and
2 directly involved in decisions to establish and to maintain the
3 conditions, policies, and practices at Calipatria complained of
4 herein and in decisions regarding the hiring, firing, training
5 and supervision of the Calipatria Warden and Calipatria staff.
6 Furthermore, based on plaintiff's information and belief,
7 plaintiff alleges that defendant has had actual knowledge of
8 the conditions complained of herein and has been aware that
9 plaintiff's rights have been violated, but has failed to
10 conduct a reasonable inquiry into the deficiencies that are
11 causing plaintiff's injuries and has not undertaken reasonable
12 means to correct or eradicate those deficiencies. He is sued
13 individually and in his official capacity.
14

15
16 12. Defendant Larry Small is the Warden of the Calipatria
17 State Prison. In that capacity, defendant Small is responsible
18 for the administration and day-to-day operations of Calipatria.
19 Defendant Small was and is at all relevant times personally and
20 directly involved in decisions to establish and to maintain the
21 conditions, policies, and practices at Calipatria complained of
22 herein and in decisions regarding the hiring, firing, training
23 and supervision of Calipatria staff. Furthermore, based on
24 Plaintiff's information and belief, plaintiff alleges that
25 defendant has had actual knowledge of the conditions complained
26 of herein and has been aware that plaintiff's rights have been
27 violated, but has failed to conduct a reasonable inquiry into
28

1 the deficiencies that are causing plaintiff's injuries and has
2 not undertaken reasonable means to correct or eradicate those
3 deficiencies. He is sued individually and in his official
4 capacity.

5 13. Defendant Jose Bulteman is the Assistant Warden of
6 Calipatria. In that capacity, defendant Bulteman is
7 responsible for assisting the Warden with the administration
8 and day-to-day operations of Calipatria, and he is responsible
9 for the administration of religious and spiritual services for
10 inmates at Calipatria. Defendant Bulteman was and is at all
11 relevant times personally and directly involved in decisions to
12 establish and to maintain the conditions, policies, and
13 practices at Calipatria complained of herein and in decisions
14 regarding the hiring, firing, training and supervision of
15 Calipatria staff. Furthermore, based on Plaintiff's information
16 and belief, plaintiff alleges that defendant has had actual
17 knowledge of the conditions complained of herein and has been
18 aware that plaintiff's rights have been violated, but has
19 failed to conduct a reasonable inquiry into the deficiencies
20 that are causing plaintiff's injuries and has not undertaken
21 reasonable means to correct or eradicate those deficiencies. He
22 is sued individually and in his official capacity.

23 14. Defendant T. Borem is a Correctional Sergeant
24 employed at Calipatria. In that capacity, Defendant Borem is,
25 and was at all relevant times herein, employed as a

1 Correctional Sergeant at Calipatria. Defendant Borem is
2 responsible for overseeing and processing all spiritual and
3 religious materials received by Calipatria inmates from outside
4 the prison, primarily through the mail, and he is personally
5 and directly responsible for the implementation of policies and
6 procedures as to processing these materials. He is sued
7 individually and in his official capacity.
8

9 15. Defendants Schwarzenegger, Cate, Small, Builteman and
10 Borem are hereinafter sometimes referred to as "defendants."

11 16. Defendants are legally responsible, in whole or in
12 part, for the operation of and for conditions at Calipatria;
13 for creating and maintaining an environment that reasonably
14 allows for the free exercise of religious practices. The
15 defendants also are entrusted with the responsibility for
16 making policies and/or for implementing religious exercise
17 regulations and policies. Defendants are entrusted with the
18 responsibility for enforcing, and ensuring that their
19 subordinates, agents and employees enforce, such laws and
20 policies by taking prompt remedial action following acts of
21 inappropriate behavior or denial of certain religious
22 practices. Defendants are responsible for the hiring, firing,
23 training and supervision of Calipatria staff.
24
25

26 17. Upon information and belief, each of the defendants
27 either approved, implemented, or otherwise allowed for the
28 unlawful conditions, actions, policies and procedures at

1 Calipatria that violated plaintiff's free exercise rights.
2 Defendants failed to make, to implement, or to enforce, and to
3 ensure that their subordinates, agents, and employees enforced,
4 the above-described laws and policies or to take necessary and
5 prompt remedial action following knowledge or reports of denial
6 of religious practices.
7

8 **FACTUAL ALLEGATIONS**

9 Fundamental Spiritual Beliefs of Native Americans and the
10 Requirements for Plaintiff Believers and Practitioners

11 18. Plaintiff Ralph Martinez is a Native American and a
12 believer in and practitioner of Native American religious and
13 spiritual beliefs. He is incarcerated at Calipatria, under the
14 authority of the CDCR.

15 19. The religious beliefs and practices among the 556
16 different federally recognized Indian tribes are diverse, but
17 some beliefs and practices are syncretic and common to all, and
18 are referred to herein as the Native American Religion.

19 20. The Native American Religion includes interaction with
20 the natural world which is imbued with supernatural meaning,
21 natural objects have living spirits, and ceremonial rituals
22 ensure that communal and individual prosperity continues.

23 21. Spiritual traditions and principles help define
24 Native American cultures, with no distinction between spiritual
25 life and cultural life. Wearing long hair, headbands, and
26 certain traditional clothing, talismans and totems, and the
27
28

1 craft of traditional bead and leather work are as much
2 spiritual practices as cultural expressions.

3 22. Native American Religion ceremonies are the primary
4 vehicles of spiritual expression, and a ceremonial leader or
5 elder ensures the authenticity of religious observances. A
6 spiritual leader guides and teaches practitioners and holds an
7 important position, having had a vision to hold this position
8 combined with wisdom and good judgment.
9

10 23. Symbols and sacred objects are fundamental to Native
11 American spiritual practices.

12 24. Native Americans believe in a benevolent Creator, or
13 Great Spirit, from whom all things come, and who always cares
14 and listens.
15

16 25. All things in nature are central to Native American
17 Religion beliefs, and communing with spirits and performing
18 ceremonies occurs outdoors or directly in contact with Mother
19 Earth. Natural objects, such as shells, stones, feathers,
20 plants, animal bones, claws and teeth have significant roles in
21 spiritual practices because they are reminders of certain
22 important principles or qualities and are natural reservoirs of
23 spiritual power.
24

25 26. In the Native American Religion each day is a sacred
26 day of thanksgiving. Personal prayer and thanksgiving is a
27 sacred rite, central to reverence for the Creator and all the
28 sacred manifestations of nature.

1 27. The daily burning of sweetgrass, sage, cedar, tobacco
2 copal and kinnikinnick is a sacred practice of the Native
3 American Religion for spiritual cleansing, blessing and
4 purification.

5 28. Many Native American Religion practitioners carry or
6 wear a medicine bag that may contain stones, animal parts,
7 herbs, seeds or corn kernels. The spirits of these objects
8 become part of the wearer, and the medicine bag is an
9 invocation to the Creator to continually be with and guide him.
10

11 29. Of the many plants and herbs used ritualistically and
12 ceremonially, four plants are sacred and especially revered in
13 daily living for the Native American Religion. The Great Spirit
14 instructed Native Americans to use tobacco, sage, sweetgrass,
15 and cedar smoke as a physical reminder of the Creator's
16 omnipotent presence and as a conduit to sacred ways. Tobacco is
17 the most important of these sacred plants, because it is
18 believed to open the door to the Creator, and when used to make
19 smoke, it is one of the most sacred of plants for Native
20 Americans. Ceremonies using tobacco invoke a relationship with
21 the energies of the universe, and ultimately the Creator. Some
22 Native Americans use a form of tobacco known as kinnikinnick,
23 which is a mixture of red willow, yellow willow, cedar, tobacco
24 bear berries and other herbs.
25

26 30. There are four traditional tobacco uses: prayer,
27 offerings, purification and showing respect. Tobacco is offered
28

1 to the fire for smoke, set on the ground, or sprinkled, all to
2 show humility, gratitude, and innocence, and as a means of
3 communication. When smoked in a pipe, tobacco communicates to
4 the Creator and to ancestors by carrying prayers to the Sky
5 World. The smoke is sacred and not inhaled. Tobacco is
6 sprinkled on the drum after prayers to give thanks the Creator.
7 Tobacco is often held in hand in daily prayers of gratitude.
8

9 31. Tobacco ties, small colored pieces of cloth
10 containing tobacco and symbolizing prayers, are offered to the
11 fire or to Mother Earth on behalf of the Sacred Circle. Native
12 Americans carry the ties or tie them to the Sweat Lodge, and
13 often burn them during Sweat Lodge ceremonies to carry prayers
14 to the Creator.
15

16 32. Native tobacco used spiritually is a different
17 species than common tobacco sold in smoke shops and stores.
18 Cigarette, cigar and pipe tobacco are not from the same sacred
19 plant used in the Native American Religion, which does not
20 contain nicotine or additives. If inhaled, it does not produce
21 the same effect that generally causes addiction to common
22 tobacco products.
23

24 33. The Sacred (Ceremonial) Pipe is central to Native
25 American Religion. It is a revered spiritual object that may be
26 used only for offerings and prayers. The Creator's spirit is
27 considered to be in tobacco, and when smoked in the Sacred
28 Pipe, the spirit as smoke enters the body, refreshes it, and

1 then travels to the sky laden with thanksgiving. For thousands
2 of years Native Americans communicated with their Creator in
3 this manner.

4 34. The Native American Religion holds certain days as
5 sacred, including the full moon, new moon, the solstices, and
6 the equinoxes. On these days practitioners commune with one
7 another and with the spirits, and they perform special rituals
8 and ceremonies. This includes an annual outdoor ceremony
9 commonly known as a Pow-Wow.
10

11 35. An important aspect of the Native American Religion
12 is the reverence for nature and the collection of sacred
13 manifestations of nature from Mother Earth. These sacred items
14 are shared among practitioners in the greater Native American
15 community.
16

17 36. The Native American Religion incorporates handicrafts
18 using beads, leather and other traditional materials, which
19 form a part of spiritual growth and healing. The items produced
20 are sacred and spiritual, which draw from the spirit and energy
21 invested in the object while creating it.
22

23 37. As a sincere practitioner of the Native American
24 Religion, plaintiff must pray on a daily basis, he must smoke
25 the Sacred Pipe during the Sacred Sweat Lodge at least weekly,
26 he must have an annual Pow-Wow and ceremonies for the
27 solstices, equinoxes and full and new moons, he must have a
28 Native American Spiritual Leader ("NASL"), and he must

1 participate in Native American handicrafts. It is imperative
2 that plaintiff use sacred tobacco and other sacred plants in
3 his prayers and for the Sacred Pipe, and have access to tobacco
4 for these purposes. It is imperative that plaintiff participate
5 in the Sacred Sweat Lodge at least weekly. It is imperative
6 that plaintiff use an outdoor area for an annual Pow-Wow, and
7 for solstices, equinoxes, full and new moon ceremonies, and
8 that ceremonial food for these ceremonies be consumed
9 communally outdoors during these ceremonies. It is imperative
10 that plaintiff have access to a NASL to administer and guide
11 plaintiff's religious ceremonies and practices. It is
12 imperative that plaintiff receive spiritual packages from the
13 Native American community. If it is determined that plaintiff's
14 access to tobacco for daily prayers is allowed only through a
15 NASL, then it is imperative that an NASL is on staff to
16 administer those services, as with the other religions at
17 Calipatria.

20 Calipatria And Its Policies And Procedures

22 38. Calipatria is one of 33 adult prisons in California
23 operated by the CDCR, located in Imperial County, California.

24 39. Calipatria's mission is to provide for the
25 confinement of general population Level I (minimum custody) and
26 Level IV (maximum custody) inmates who are willing to
27 participate in vocational and/or academic programs, prison
28

1 industries or support services.

2 40. Calipatria State Prison opened in January 1992, and
3 covers a total of 1,227.5 acres (with the prison on 300 acres).
4 As of Fiscal Year 2005/2006, Calipatria staff totaled 1,143 and
5 its annual operating budget was \$123 million. As of September
6 2007, Calipatria had a design capacity of 2,208 and a
7 population of 4,168.
8

9 41. Calipatria is designated a CDCR prison that provides
10 inmate programs, including vocational, academic, and "other"
11 programs. Under "other" programs, "religious" programs is
12 listed.

13 42. Calipatria is comprised of six separate facilities
14 identified as Facilities A through F. Inmates are confined to
15 each facility, and the facilities are operated semi-
16 independently of one another.
17

18 43. As of December 30, 2005, CDCR terminated the receipt
19 of inmate packages from family members to prisoners in CDC
20 prisons. If prisoners wish to obtain packages, they may obtain
21 them only from prison-approved vendors.
22

23 44. An exception to inmate purchases is made for "Special
24 Purchases" using funds from inmate trust accounts. Special
25 Purchases of "Religious Items" and handicraft materials are not
26 supposed to be counted as personal property packages made from
27 departmentally approved, special purchase vendors. The prison
28 assesses a 10 percent service charge for some Special

1 Purchases, including for handicraft material. Calipatria is
2 required to create and make available to all inmates procedures
3 for Special Purchases. Purchases of Religious Items, and
4 handicraft material require an inmate to obtain prior approval.
5 Religious Items must be approved by designated staff and the
6 institutional chaplain, and are received by the institutional
7 chaplain and inspected by designated staff prior to issuance.
8

9 45. Defendants' customs, practices, policies and
10 procedures prohibit plaintiff from obtaining sacred materials
11 from the greater Native American community, even if donated by
12 a religious organization, and restrict all purchases of sacred
13 artifacts and sacred plants to several prison-approved
14 commercial vendors.
15

16 46. Defendants' customs, practices, policies and
17 procedures restrict Plaintiff's purchase of Religious Items to
18 \$200 per quarter, per facility at Calipatria. For example, the
19 prisoners housed in Facility B at Calipatria may purchase up to
20 \$200 in leather and beads from Calipatria-approved vendors
21 every three months. They may not exceed the \$200 limit for any
22 other purchases during that quarter.
23

24 47. Defendants' customs, practices, policies and
25 procedures provide recognized religious groups with a trust
26 account and funding used for the religious purposes of the
27 group, and on information and belief, plaintiff alleges that
28 defendants have refused to fund the plaintiff's Native American

1 group due to the absence of the NASL.

2 48. Defendants' customs, practices, policies and
3 procedures provide plaintiff's Native American group in
4 Facility B with fire wood for the Sacred Sweat Lodge, but often
5 there is no wood or insufficient wood for the weekly Sacred
6 Sweat Lodge, or the wood is inadequate for ceremonial purposes,
7 because it includes chemical-laden commercial pallets or quick
8 burning roots and twigs that cannot sustain a fire for the
9 duration of the Sacred Sweat Lodge ceremony. Consequently,
10 plaintiff's participation in the weekly Sacred Sweat Lodge is
11 frequently cancelled or diminished.
12

13 49. Plaintiff asserts and alleges, based on good faith
14 and belief, that the defendants' customs, practices, policies
15 and procedures for providing fire wood for the Sacred Sweat
16 Lodge to Facility B at Calipatria is the same for all
17 facilities at Calipatria.
18

19 50. Defendants' customs, practices, policies and
20 procedures restrict plaintiff's access to Religious Items, by
21 prohibiting Plaintiff from purchasing and using red and blue
22 beads for their spiritual handicraft.
23

24 51. Defendants' customs, practices, policies and
25 procedures require that defendants carefully search all
26 packages that come into a prison, regardless of their source or
27 destination. Notwithstanding, defendants restrict "spiritual
28 packages" to approved vendors only.

1 52. California Penal Code § 5031.1 prohibits the
2 possession and use of tobacco by inmates under the jurisdiction
3 of the CDCR effective July 1, 2005, except when tobacco is used
4 for religious ceremonies, which use is supposed to be regulated
5 by regulations.

6 53. Title 15 of the California Code of Regulations, §§
7 3187 and 3188, were enacted by the Defendants to prohibit
8 possession and use of tobacco by inmates within the confines of
9 any prison, except for approved religious services.
10

11 54. Calipatria has implemented institutional regulations
12 restricting the Plaintiff's possession and use of sacred
13 tobacco and other herbs as set forth in Department Operation
14 Manual ("DOM") Supplement 53050, revised as of March 2006.
15

16 55. Defendants customs, practices, policies and
17 procedures are to withhold from plaintiff sacred tobacco in the
18 "Central Control Complex" locker at Calipatria, denying
19 plaintiff access to or possession of sacred tobacco and other
20 plants for personal prayer, cleansing, purification, blessing,
21 offering and thanksgiving, and restricting access to sacred
22 tobacco to weekly ceremonies.
23

24 56. Defendants customs, practices, policies and
25 procedures restrict plaintiff's use and possession of sacred
26 tobacco to Sacred Sweat Lodge ceremonies only, which are held
27 no more than once per week.

28 57. Defendants customs, practices, policies and

1 procedures deny plaintiff access to the Sacred Sweat Lodge
2 during times of prison lockdown. Calipatria was under lockdown
3 from August 2005 through June 2006. During that time,
4 Defendants suspended all Sacred Sweat Lodge ceremonies.
5 Consequently, Defendants denied Plaintiff all access to sacred
6 tobacco.

7
8 58. Defendants customs, practices, policies and
9 procedures are to routinely cancel Sacred Sweat Lodge
10 ceremonies for what plaintiff is informed of and believes to be
11 operational reasons. For example, defendants cancelled the
12 Sacred Sweat Lodge at Calipatria, Facility B, on June 11, June
13 18, July 2, July 30, August 20, September 3, December 24, and
14 December 31, 2006, and February 4, September 9, and December 9,
15 2007. Consequently, defendants denied plaintiff all access to
16 sacred tobacco at these times.

17
18 59. Plaintiff asserts and alleges, based on good faith
19 and belief, that the defendants cancelled Sacred Sweat Lodge
20 Ceremonies at other Calipatria facilities for operational
21 reasons. Consequently, defendants denied plaintiff all access
22 to sacred tobacco at these times.

23
24 60. Defendants' policies and regulations created the
25 position NASL, either as a paid employee or as a volunteer, to
26 coordinate and administer Native American spiritual practices,
27 obtain Religious Items, and perform religious ceremonies.

28 61. Defendants' customs, practices, policies and

1 procedures restrict all access to the sacred tobacco for the
2 Sacred Sweat Lodge to the prison Chaplain or NASL. Defendants
3 have denied and continue to deny plaintiff access to the sacred
4 tobacco for the Sacred Sweat Lodge because the Chaplain and the
5 NASL have been absent. For example, defendants denied plaintiff
6 access to the sacred tobacco for use in the Sacred Sweat Lodge
7 at Calipatria, Facility B, on September 24, 2006, and May 6,
8 July 18, August 26, and September 23, 2007, allegedly due to
9 the absence of the Chaplain or NASL.
10

11 62. Calipatria does not have a NASL and has not had a
12 NASL for approximately two years. On information and belief,
13 plaintiff alleges that defendants have intentionally refused to
14 hire a NASL, thereby denying plaintiff the right to practice
15 his spiritual beliefs. Plaintiff's spiritual needs are
16 administered by a Calipatria Chaplain who is not Native
17 American and who is not a believer in or a practitioner of the
18 Native American Religion. Plaintiff alleges and believes that
19 despite any good intentions of the Calipatria Chaplain,
20 plaintiff's spiritual needs have not been and cannot be
21 realized without a NASL, particularly in regard to Sacred Pipe
22 ceremonies and Sacred Sweat Lodge ceremonies.
23
24

25 63. Plaintiff asserts and alleges, based on good faith
26 and belief, that the defendants denied prisoners access to
27 sacred tobacco at other Calipatria facilities due to the
28 absence of a Chaplain or NASL.

1 64. Defendants' customs, practices, policies and
2 procedures require that the NASL request in writing the
3 Calipatria Warden's approval for the Pow-Wow and all Native
4 American ceremonies in connection with the solstices,
5 equinoxes, full and new moons.

6 65. Defendants' customs, practices, policies and
7 procedures prohibit Plaintiff from eating outdoors communally
8 during ceremonies that include the Pow-Wow and solstices,
9 equinoxes and full and new moon ceremonies. Defendants'
10 policies require that the Plaintiff interrupt their outdoor
11 ceremonies and continue them indoors where food is served.

12 66. Defendants have failed to draft, adopt and implement
13 governing policies and procedures necessary to ensure the free
14 exercise of religion.
15

16 67. Upon information and belief, CDCR has agreed on at
17 least one occasion to take specific measures to address the
18 conditions and lack of policies, procedures and training for
19 CDCR staff to accommodate religious practices of Native
20 American inmates in the CDCR system.
21

22 68. The RLUIPA mandates that institutionalized
23 individuals shall have the ability to participate in religious
24 ceremonies. The absence of rules and regulations has enabled a
25 culture of indifference to the religious practice needs of
26 plaintiff, with requests for a NASL and necessary items of the
27 Native American religions systematically ignored or denied by
28

1 defendants. Prison staff are not properly trained, lack
2 policies and procedures to guide their decisions and routinely
3 deny access to religious services and items.

4 **CLASS ALLEGATIONS**

5
6 69. Plaintiff brings this action on behalf of himself
7 and all other persons similarly situated pursuant to Federal
8 Rules of Civil Procedure 23(a) and 23(b)(2). The class, as
9 proposed by Plaintiff, consists of:

10 All Native American prisoners who are practitioners of
11 the Native American Religion, who are now or will be in
12 the custody of the CDCR.
13

14 70. The requirements of Federal Rules of Civil Procedure
15 23(a) and 23(b)(2) are met in that the class is so numerous
16 that joinder of all members is impracticable. Upon information
17 and belief, thousands of prisoners in the custody of the CDCR
18 are Native Americans, and many of those prisoners are sincere
19 practitioners of the Native American Church. All of these
20 prisoners are completely dependent on the CDCR to practice
21 their religion. Counsel for plaintiff are aware of at least
22 another 65 proposed class members who are similarly situated to
23 the named plaintiff at Calipatria alone. Counsel are aware of
24 dozens of others similarly situated elsewhere in other CDCR
25 prisons, making joinder of all plaintiffs impracticable.
26

27 71. There are questions of law and fact common to the
28

1 proposed class that predominate over any questions affecting
2 only the individually named plaintiff, including: (1) whether
3 CDCR's customs, practices, policies and procedures that deny
4 weekly access to the Sacred Sweat Lodge, receipt of Religious
5 Items, possession of tobacco violate RLUIPA, the First
6 Amendment, Art. 1 § 4 of the California Constitution,
7 California Penal Code § 5009(a); (2) whether the failure to
8 hire a NASL is a violation of RLUIPA and Title 15 of California
9 Code of Regulations; (3) whether denying Native American
10 prisoners the right to possess tobacco constitutes denial of
11 free exercise that is neither supported by a legitimate state
12 purpose to restrict the prisoner's exercise of religion nor the
13 least restrictive means to meet any legitimate state purpose,
14 thus violating RLUIPA, the First Amendment, and Penal Code §
15 5030.1(a).
16
17

18 72. The claims of the named plaintiff are typical of the
19 claims of the proposed class. The named plaintiff, like all
20 class members, has been denied access to a Native American
21 Spiritual Advisor, denied the right to possess tobacco for
22 prayer, denied the right to access the Sacred Sweat Lodge on at
23 least a weekly basis, denied the right to receive Spiritual
24 Packages from the Native American community, limited to
25 spending only \$200 for Religious Items per quarter, denied the
26 right to have certain Religious Items, and denied the right to
27 have a trust fund budget.
28

1 73. Like the named plaintiff, members of the proposed
2 class are suffering prejudice from the denial of their right to
3 free exercise of their sincere religious beliefs.

4 74. The prosecution of separate actions by individual
5 members of the class would create a risk of adjudications with
6 respect to individual members which would, as a practical
7 matter, substantially impair the ability of other members to
8 protect their interests.

9
10 75. The named plaintiff will fairly and adequately
11 represent the interests of all members of the proposed class
12 because he seeks relief on behalf of the class as a whole and
13 has no interests antagonistic to other members of the class.
14 The named plaintiff is represented by experienced federal
15 Indian law attorneys who are considered able practitioners in
16 federal constitutional and statutory adjudications.

17
18 76. The defendants have acted on grounds generally
19 applicable to the class, thereby making final injunctive and
20 declaratory relief appropriate to the class as a whole.

21 **DECLARATORY AND INJUNCTIVE RELIEF**

22 77. An actual and immediate controversy has arisen and
23 now exists between plaintiff and defendants. The parties have
24 genuine and opposing interests that are direct and substantial.

25
26 78. Plaintiff is or has been incarcerated by CDCR and
27 there is a reasonable expectation that while incarcerated at
28 CDCR plaintiff will be prevented from practicing his religion,

1 which will result in continuing injury to plaintiff and other
2 class members. Unless enjoined by the Court, plaintiff will
3 continue to be subjected to defendants' unlawful policies,
4 practices, acts, and omissions without recourse and with no
5 adequate remedy at law.

6
7 **FIRST CLAIM**

8 Violation of Religious Land Use and Institutionalized Persons
9 Act, 42 U.S.C. §§ 2000cc *et seq.*

10 79. Plaintiff realleges and incorporates herein each and
11 every allegation contained in paragraphs 1 through 78,
12 inclusive, as if fully set forth herein.

13 80. The Religious Land Use and Institutionalized Persons
14 Act of 2000, provides:

15
16 No government shall impose a substantial burden on
17 the religious exercise of a person residing in or
18 confined to an institution . . . even if the burden
19 results from a rule of general applicability,
20 unless the government demonstrates that imposition
21 of the burden on that person - (1) is in furtherance
22 of a compelling governmental interest; and (2) is
23 the least restrictive means of furthering that
24 compelling governmental interest.

25 42 U.S.C. §§ 2000cc-1.

26 81. By severely restricting plaintiff's right to
27 possesses tobacco for daily prayers, to smoke the Sacred Pipe
28 during the Sacred Sweat Lodge at least weekly, to attend an
annual Pow-Wow and ceremonies for the solstices, equinoxes and
full and new moons, to be guided by and have communion with a

1 NASL, to receive Native American Religious Items, and to
2 participate in Native American handicrafts, defendants imposed
3 on plaintiff's religious exercise a substantial burden, which
4 neither furthers a compelling governmental interest nor is the
5 least restrictive means of furthering a compelling government
6 interest.

7
8 82. The substantial burden is imposed in a program or
9 activity that receives Federal financial assistance.

10 83. Defendants violated plaintiff's rights under RLUIPA.

11 **SECOND CLAIM**

12 Violation of the First Amendment

13 84. Plaintiff realleges and incorporates by reference
14 paragraphs 1 through 83 above as though fully set forth herein.

15
16 85. The First Amendment to the United States Constitution
17 provides: "Congress shall make no law respecting an
18 establishment of religion, or prohibiting the free exercise
19 thereof. . . ."

20 86. By severely restricting plaintiff's right to
21 possesses tobacco for daily prayers, to smoke the Sacred Pipe
22 during the Sacred Sweat Lodge at least weekly, to attend an
23 annual Pow-Wow and ceremonies for the solstices, equinoxes and
24 full and new moons, to be guided by and have communion with a
25 NASL, to receive Native American Religious Items, and to
26 participate in Native American handicrafts, defendants have
27 denied, and continue to deny, plaintiff his right to free
28

1 exercise of his sincere religious beliefs as guaranteed by the
2 First Amendment of the Constitution of the United States.

3 **THIRD CLAIM**

4 Violation of California Constitution, Article I, Section 4

5 87. Plaintiff realleges and incorporates by reference
6 paragraphs 1 through 86 above as though fully set forth herein.

7 88. Article I, Section 4 of the California Constitution
8 provides: "Free exercise and enjoyment of religion without
9 discrimination or preference are guaranteed."

10 89. By severely restricting plaintiff's right to
11 possesses tobacco for daily prayers, to smoke the Sacred Pipe
12 during the Sacred Sweat Lodge at least weekly, to attend an
13 annual Pow-Wow and ceremonies for the solstices, equinoxes and
14 full and new moons, to be guided by and have communion with a
15 NASL, to receive Native American Religious Items, and to
16 participate in Native American handicrafts, defendants have
17 denied, and continue to deny, plaintiff his right to free
18 exercise of his religion as guaranteed by Article 1, Section 4
19 of the California Constitution.
20
21

22 **FOURTH CLAIM**

23 Violation of California Penal Code, § 5009(a)

24 90. Plaintiff realleges and incorporates by reference
25 paragraphs 1 through 89 above as though fully set forth herein.

26 91. California Penal Code § 5009(a) provides: "It is the
27 intention of the Legislature that all prisoners shall be
28

1 afforded reasonable opportunities to exercise religious
2 freedom."

3 92. By severely restricting plaintiff's right to
4 possesses tobacco for daily prayers, to smoke the Sacred Pipe
5 during the Sacred Sweat Lodge at least weekly, to attend an
6 annual Pow-Wow and ceremonies for the solstices, equinoxes and
7 full and new moons, to be guided by and have communion with a
8 NASL, to receive Native American Religious Items, and to
9 participate in Native American handicrafts, defendants denied
10 plaintiff reasonable opportunities to exercise his sincere
11 religious beliefs in the Native American Religion.
12

13 93. Defendants violated plaintiff's rights under §
14 5009(a).
15

16 **FIFTH CLAIM**

17 Violation of California Penal Code, § 5030.1(a)

18 94. Plaintiff realleges and incorporates by reference
19 paragraphs 1 through 93 above as though fully set forth herein.

20 95. California Penal Code § 5030.1(a) requires that
21 defendants adopt regulations that exempt approved religious
22 ceremonies from the prohibition of tobacco use or possession by
23 CDCR inmates.
24

25 96. Defendants adopted regulations and policies to exempt
26 religious ceremonies from the prohibition of tobacco use and
27 possession by inmates, but defendants violated the law through
28 its implementation by the custom and practice of defendants of

1 denying plaintiff the use and possession of tobacco for
2 approved Native American Religion ceremonies.

3 97. Defendants violated plaintiff's right to use and
4 possess tobacco for approved religious ceremonies.

5 **JURY TRIAL DEMAND**

6 Pursuant to Federal Rule of Civil Procedure 38(b),
7 plaintiff hereby demands trial by jury of all issues properly
8 triable thereby.
9

10 **PRAYER FOR RELIEF**

11 Plaintiff prays for judgment against defendants that
12 includes but is not limited to:

13 1. A declaration that plaintiff is entitled to possession
14 of tobacco and other sacred plants for daily prayer and for
15 Sacred Pipe ceremonies, and that he shall have access to
16 tobacco and sacred plants for these purposes;
17

18 2. A declaration that the plaintiff is entitled to attend
19 the Sacred Sweat Lodge ceremony at least once per week, that
20 the defendants shall provide an appropriate quantity and
21 quality of wood for these ceremonies or allow plaintiff to
22 purchase and have the wood delivered, and that the plaintiff is
23 entitled to smoke the Sacred Pipe at these ceremonies;
24

25 3. A declaration that the plaintiff is entitled to attend
26 and help organize an outdoor Pow-Wow at least once per year,
27 and that he is entitled to attend and help organize outdoor
28 ceremonies for the solstices, equinoxes and full and new moons,

1 and that defendants shall authorize ceremonial food for these
2 ceremonies to be consumed communally outdoors during these
3 ceremonies;

4 4. A declaration that plaintiff is entitled to commune
5 with and seek guidance from a Native American Spiritual Advisor
6 on a daily basis, and that the defendants shall employ a Native
7 American Advisor to fulfill these purposes;

9 5. A declaration that the plaintiff is entitled to
10 receive spiritual packages from the Native American community;

11 6. A declaration that the plaintiff is entitled to
12 purchase Religious Items from vendors recognized by the Native
13 American community as having practices consistent with the
14 Native American Religion;

15 7. A declaration that the religious trust account for
16 Native Americans and the corresponding budget shall be restored
17 and replenished, retroactive to the time of suspension and
18 depletion by defendants;

19 8. An injunction restraining defendants from continuing
20 to restrict plaintiff's use of tobacco and use of the Sacred
21 Pipe;

22 9. An injunction restraining defendants from cancelling
23 Sacred Sweat Lodge ceremonies;

24 10. An injunction restraining defendants from refusing to
25 hire a NASL;

26 11. An injunction restraining defendants from continuing
27
28

1 to restrict plaintiff's right to purchase Religious Items by
2 limiting purchases to \$200 per quarter;

3 12. An injunction restraining defendants from suspending
4 or otherwise depleting the Native American trust account and
5 its funding because there is not a NASL, and thereby denying
6 plaintiff the ability to purchase Religious Items with such
7 fund;
8

9 13. An injunction restraining defendants from preventing
10 plaintiff from purchasing and handcrafting certain Religious
11 Items because of their colors or other non-religious contexts;

12 14. An injunction restraining defendants from adopting
13 policies or taking retaliatory action, including but not
14 limited to segregation or a facility transfer, against
15 plaintiff for exercising constitutional and statutory rights
16

17 15. Costs and reasonable attorneys' fees;

18 16. For such other relief as this Court may deem just and
19 proper.
20

21 DATED: September 12, 2008

22 _____
DAVID DEHNERT
Attorney at Law

23
24 LESTOR J. MARSTON
Rapport and Marston

25 *Attorneys for Plaintiff*
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27
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